



Advisory

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SECURING YOUR HOME IN AN ERA OF RISING CRIME

Residential burglary is on the increase in many parts of the country, and no neighborhood is off limits. Increases in property crime are occurring the most in states that have reduced consequences for criminals, and California is leading the nation in that regard.

Some quick facts about home burglaries:

- Most burglaries occur between 10:00 a.m. and 3:00 p.m. when many people are at work or school, but roughly 30% occur when someone is home. Over 1/3 of all burglars enter through the front door, and 30% get in through an unlocked door or window.
- The first room most burglars go into is the master bedroom for cash, jewelry, firearms, and other valuables.
- Most residential burglars are looking for easy access, and most can burglarize a home in 10 minutes. Less than 15% of residential burglars are ever arrested.
- Door-kick burglars are particularly brazen. They will ring the doorbell to see if anyone is home. If no one answers, they will kick in the front door and loot the house.
- Bumping burglars use a device called a bumpkey that fits in the keyhole, and when bumped from behind, it pops open most locks within 30 seconds.
- An easy access point for more discreet thieves is an attached garage, particularly one with an older side door or a window opening to a back or side yard. A burglar will walk through the gate (if there's no lock) or jump the fence, break the glass to get into the garage, and be free to pry open the door to the house unobserved.

So, what can you do to make your home less attractive to burglars?

Make your house a hard target:

- Add deadbolts to every exterior door of your home and locks on sliding doors and windows, and lock them when you're not home and at night.
- Trim plants around windows so that criminals cannot hide behind them.
- Replace old exterior doors, with solid wood or metal security doors.
- For personal security at night, add a single-sided deadbolt to the front door. A single-sided deadbolt does not have a keyhole on the outside of the door, so burglars will not know that it is there. Locking a regular deadbolt installed near the door handle and a

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HEATHER MAC DONALD ADDRESSES CJLF BOARD



*Heather MacDonald,
Thomas W. Smith Fellow at the
Manhattan Institute*

Manhattan Institute scholar Heather Mac Donald, a nationally recognized expert on crime and policing, addressed the Foundation's board members and supporters at an April 4 meeting in Los Angeles. Mac Donald's recent book, "The War on Cops," has sparked controversy among civil rights groups and liberal-progressives by challenging the validity of the narrative pushed by the "Black Lives Matter" movement and the national media that racist police are shooting blacks. Her remarks focused on widely available data that indicates police are actually less likely to shoot black criminal suspects than suspects of other races, and that disproportionate black interactions with police are the result of disproportionate levels of violent crime among blacks compared to other races. She also noted that the

hatred of police promoted by "Black Lives Matter" and other protest groups has resulted in a dramatic increase in the unprovoked shooting of police officers and last year's record-setting number of officer killings. Mac Donald coined the phrase "Ferguson Effect" to describe the impact on policing caused by anti-police riots, the media, and politicians' tarring of police as racists following the 2014 shooting of Michael Brown in Ferguson, Missouri.

As high crime communities have become more hostile to police, officers have become less proactive, choosing not to clear urban street corners of gang members and pimps or stop and frisk suspects and probationers to look for guns or drugs. In places where police have backed off, such as Chicago,

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VIEWPOINT

SUPREME COURT HOLDS ORAL ARGUMENT ON PROP. 66

On June 6, the California Supreme Court heard oral argument in **Briggs v. Brown**, the case challenging Proposition 66, the “Death Penalty Reform and Savings Act of 2016.” The petitioner, Ron Briggs, who is challenging the initiative, was represented by Christina Von der Ahe Rayburn, of Orrick, Herrington & Sutcliffe. The named respondents are Governor Brown, Attorney General Xavier Becerra, and the Judicial Council, represented by Deputy California Attorney General Jose Zelidon-Zepeda. The Proposition 66 campaign committee, Californians to Mend, Not End, the Death Penalty, successfully moved to intervene in the case, and I represented the committee at the argument. The hour was divided, 30 minutes for the challengers, 20 minutes for the Attorney General and 10 minutes for me.

The argument was streamed live. For those who didn’t catch it, a link to the archived video should be posted soon at: <http://www.courts.ca.gov/35333.htm>.

The petitioner’s challenge was a scattershot attack, challenging many provisions of the initiative in an effort to bring the whole enactment down. Press accounts of the argument focused on the issue that was discussed at length, the requirement that the direct appeal and initial habeas corpus petition be completed within five years. In my view, the more important indication from the argument is which issues did not prompt any questions for our side from the justices.

It is always dicey to predict from oral argument, but judging from the issues that do *not* seem to be seriously in question, it appears unlikely that the court will invalidate the initiative as a whole or any substantial portion of it.

Ms. Rayburn went first. Petitioner’s first challenge comes under the provision of the California Constitution that an initiative may not embrace more than one subject. I was surprised to hear her argue the single-subject claim first and for a significant portion of her time. Apparently the brief-

ing had not educated her that this claim is total trash. An initiative that deals only with enforcing judgments in capital cases is laser-focused in comparison to the far broader initiatives the court has approved. The justices did educate her in short order. They peppered her with questions on the weaknesses of that argument and finally suggested she stop wasting her limited time with it.

She then attacked the initiative’s provision establishing a five-year time limit, arguing that it is a violation of the separation of powers, and this was the focus for most of the rest of the argument. If it is interpreted as an absolute and inflexible mandate, such that the Supreme Court would have to abandon all its other work to meet the deadline at least for the existing backlog, the court would likely find that it is unconstitutional. However, under a long series of cases, the California Supreme Court and Courts of Appeal do not interpret time-limit and case-priority statutes that way. They interpret them as having enough flexibility to avoid crippling the court’s ability to perform its essential functions. There was much discussion of the word “shall,” used in the initiative with regard to the time limit. But the fact that the initiative also expressly says it does not require dismissal of the appeal if the limit is not met, and the fact that no other court can force the Supreme Court to comply with it, make it clear that it is not a strict mandate.

When I got up, Justice Mariano-Florentino Cuéllar hit me with a question before I could even say the traditional “may it please the court.” Fair enough, I thought. This is a “hot bench,” and with limited time it is better to skip the pleasantries and get right down to brass tacks. Prepared remarks are out, and I will spend my limited 10 minutes answering questions. I addressed the five-year time limit and also a question about appellate jurisdiction in capital habeas cases, but the questions curiously stopped.

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B O X S C O R E

An accounting of the state and federal court decisions handed down over the past year on cases in which CJLF was a participant. Rulings favoring CJLF positions are listed as WINS, unfavorable rulings are LOSSES, and rulings which have left the issue unsettled are DRAWS.

Moore v. Texas: 3/28/17. U. S. Supreme Court ruling announcing that, while its 2002 holding in **Atkins v. Virginia** prohibiting the execution of mentally retarded murderers was left to the states to determine what factors should be considered to determine if a defendant is mentally retarded, the state of Texas failed to adopt the correct standards. Bobby Moore was convicted and sentenced to death for shooting an elderly store clerk in the head with a shotgun during a 1980 robbery. After the **Atkins** decision was announced, Moore claimed that he was mentally retarded. When the Texas courts determined that he was not, Moore appealed to the U. S. Supreme Court, attacking the state's evaluation process as outdated. CJLF joined the case to argue that allowing periodic changes in the standard for determining retardation would invite an endless cycle of review. **LOSS**

Peña-Rodriguez v. Colorado: 3/6/17. U. S. Supreme Court ruling announcing that a criminal defendant has a constitutional right to introduce statements made by jurors after a trial is over to challenge the validity of the conviction. In this case, a child molester, found guilty by a unanimous jury, argued that state and federal rules requiring that jury deliberations be kept confidential denied his right to present statements made by jurors after the trial which implicated one juror of being biased against Mexicans. CJLF argued that Supreme Court decisions have held that statements made by jurors during deliberations should be kept confidential to allow jurors to express their views without fear of reprisal. The high court's 5-3 ruling found that the Sixth Amendment allows juror statements to be used when they suggest that a verdict might have been based upon racial bias. **LOSS**

Beylund v. Levi: 6/23/16. U. S. Supreme Court decision upholding North Dakota's implied consent law, which allows the state to suspend the driver's license of any intoxicated driving suspect who refuses to submit to a breath test. The case involved the 2013 arrest of Michael Beylund on suspicion of drunk driving. Because Beylund was uncooperative with police and failed to provide an adequate breath sample, he was arrested and taken to a hospital. After he was advised that, under the state's implied consent law, his refusal to be tested would result in suspension of his driver's license, he agreed to be tested. The test showed a blood alcohol level of over three times the legal limit. On appeal, Beylund argued that the state's implied consent law subjected him to an unconstitutional search. After two state courts rejected his claim, the U. S. Supreme Court agreed to consider it. CJLF joined the case to argue that the challenged law is a reasonable tool used in all 50 states to keep intoxicated drivers off the road, and that the privilege to drive is conditioned upon the licensee's agreement to consent to testing to protect the public from drunk drivers. The Supreme Court agreed. **WIN**

Utah v. Strieff: 6/20/16. U. S. Supreme Court decision reinstating the conviction of a Utah man for possession of methamphetamine. The decision overturned a Utah high court ruling which had held that the conviction was invalid because a police officer's discovery of the drugs, during what he thought was a lawful stop, required exclusion of the evidence. The stop was made by an experienced detective who saw the suspect leave a known drug house under surveillance. When the officer learned that there was a warrant out for the suspect's arrest, he searched him and found the illegal drugs. CJLF joined the case to argue that the Fourth Amendment protection against unlawful searches does not require that evidence be excluded because a police officer makes an honest mistake leading up to the search. In this case, it was undisputed that the officer believed that he had complied with the law. The Supreme Court's decision agreed with the CJLF argument that the extreme remedy of excluding valid evidence was not appropriate when a stop by a police officer acting in good faith uncovers a warrant authorizing arrest. **WIN**

Johnson v. Lee: 5/31/16. Summary decision by the U. S. Supreme Court overturning a Federal Ninth Circuit ruling, which ignored the high court's precedent in order to void a murderer's conviction. The case involved the 1995 stabbing murders of two women in a Los Angeles parking lot by Paul Carasi and his girlfriend Donna Lee. Overwhelming evidence, including blood and DNA, confirmed the guilt of the defendants. The mastermind of the killings, Carasi, was sentenced to death while Lee received life without parole. Five years after her conviction, Lee's claims of trial error were rejected by the California Supreme Court. A year later, Lee raised several frivolous new claims in Federal District Court, which violated the state's procedural default rule. After the court rejected those claims, the Ninth Circuit announced that the state's rule was inadequate and ordered that Lee's claims be reviewed. At the California Attorney General's request, CJLF filed a brief in the Supreme Court supporting the state's request to reconsider the Ninth Circuit's ruling. Our brief cited several Supreme Court decisions (won by CJLF) upholding procedural default rules and suggested that the lower court's ruling was so bad that a summary disposition was appropriate. The high court agreed, using CJLF arguments and research in its opinion. **WIN**

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Briggs v. Brown: California Supreme Court case in which CJLF is representing the campaign committee that supported Proposition 66, the ballot measure adopted last November to speed enforcement of the death penalty. The day after voters passed the initiative, death penalty opponents filed a lawsuit asking the Supreme Court to void the initiative for violating the state's single-subject rule for ballot measures. That rule requires that an initiative's provisions must be germane to its stated purpose. Concerned that Governor Jerry Brown, who also opposes the death penalty, would not make a strong argument to uphold the initiative, the committee asked the court to join the case as a party. In February, the court granted the request. The committee's brief reminds the court of several of their own decisions rejecting single-subject challenges to more complex initiatives. The brief cites the court's decision last year in **Brown v. Superior Court**, which held that the Governor's Proposition 57, a far broader measure which amended state laws and the Constitution to change parole, sentencing, and corrections policies, did not violate the single-subject rule. In order to find Proposition 66 in violation of the rule, the brief argues that the court would have to clear-cut 40 years of its own precedent. CJLF's Legal Director, Kent Scheidegger, presented oral argument before the high court in this case.

Davila v. Davis: U. S. Supreme Court case to review a double murderer's claim that his death sentence should be overturned because his lawyer for the first appeal of his case failed to challenge a jury instruction given at his sentencing hearing. Erick Davila was convicted on strong evidence, including his own admission, of firing into a crowd of children at a birthday party, resulting in the death of a woman and her five-year-old granddaughter and injuries to four others. At the third post-trial review of his case, Davila claimed, for the first time, that his first appeals attorney was incompetent because she failed to challenge the jury instruction. This claim was rejected by a Federal District Court and the Court of Appeals as defaulted (he should have raised it earlier) and without merit (meaning the instruction was allowable). Remarkably, the Supreme Court has agreed to hear Davila's appeal. In this case, CJLF argues that if the high court sets precedent allowing defendants to raise defaulted claims against their appeals attorneys, at a third or fourth round of review, it will create an endless cycle of review effectively blocking enforcement of the death penalty.

Hernández v. Mesa: U. S. Supreme Court review of a lawsuit seeking to hold a U. S. Border Patrol agent personally liable for the shooting of a Mexican juvenile on the Mexico side of the border. The case stems from a border patrol agent's attempt to detain a Mexican national at the border in El Paso, Texas. As the agent detained the suspect, a group of juveniles on the Mexico side began pelting him with rocks. The agent responded by firing at the juveniles, killing Sergio Adrian Hernández Guereca, a known smuggler of aliens across the U. S. border. Sergio's parents, who are also Mexican citizens, filed a federal lawsuit claiming that their son's U. S. constitutional rights were violated by the agent and that they are entitled to hold him personally liable for the excessive force he used. CJLF has joined the case to argue that because Congress has not created a remedy for cross-border shootings by federal agents, noncitizens with no ties to the U. S. have no right to recover money damages from a U. S. agent for an act occurring on foreign soil. The Foundation is asking the Court to dismiss the lawsuit.

Weaver v. Massachusetts: U. S. Supreme Court case to review a murderer's claim that his conviction must be overturned because the courtroom was overly crowded during jury selection resulting in its closure to the public. The case involves the 2003 murder of 15-year-old Germaine Rucker. On an August afternoon, Rucker was shot and killed after selling some small jewelry charms to a woman and her children. Rucker was found lying in the street on top of his bicycle and the bag carrying the jewelry was missing. Witnesses and DNA evidence identified 16-year-old Kentel Weaver as the shooter. Prior to the trial, the courtroom was so crowded with prospective jurors that Weaver's mother was informed by a court officer that the courtroom was closed for jury selection. Weaver's trial attorney did not object to the closure. Weaver was subsequently convicted of first-degree murder. On appeal, Weaver claims that his trial attorney was ineffective because he did not object to the closure of the courtroom during jury empanelment, which violated his Sixth Amendment right to a public trial. CJLF has joined the case to argue that closing the courtroom for jury selection did not affect the fairness or reliability of his trial as a whole and overturning Weaver's conviction would be contrary to the interests of justice.

People v. Farwell: California Supreme Court case to review a habitual felon's claim that his conviction of driving without a license should be overturned because the judge failed to instruct him that admitting his guilt to that offense would waive some of his constitutional trial rights. Randolph Farwell was convicted of vehicular manslaughter after his reckless driving resulted in his car hitting a tree at high speed, killing a female passenger. At the time of the crash, Farwell's license had been suspended after an earlier reckless driving arrest. Farwell also had a previous conviction for burglary. At trial, Farwell and his attorney agreed to admit guilt on the suspended license charge to prevent jurors from hearing the details of the earlier driving arrest. On appeal, Farwell argues that the law requires his conviction to be overturned because the judge did not instruct him on the consequences of his admission of guilt. CJLF has joined the case to oppose Farwell's claim, arguing that the law actually allows a review of the entire trial court record to determine if he knowingly and intelligently waived his trial rights when he admitted guilt on the driving without a license charge.

“MAC DONALD ADDRESSES CJLF”

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Baltimore, and Detroit, murder rates have skyrocketed, and the majority of murderers and victims have been black.

Among the guests attending to hear Ms. Mac Donald's remarks were Jim McDonnell, Los Angeles County Sheriff; Kermit Alexander, former NFL Defensive Back and victims' advocate; and Michele Hanisee, Los Angeles Deputy District Attorney and President of the Los Angeles Association of Deputy District Attorneys.

At an earlier closed session, the Foundation's Trustees elected Hewitt Pate, Vice President & General Counsel of the Chevron Corp., to the CJLF Board.

Later that week, Mac Donald's address at UCLA was interrupted by a large group of protesters. Her address at Claremont McKenna College was also shut down by violent protesters who blocked the entrances to the auditorium and beat on the windows until police escorted her out.

BOXSCORE

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HCRC v. Department of Justice: 3/23/16. Unanimous U. S. Ninth Circuit Court of Appeals decision overturning a 2013 injunction by District Judge Claudia Wilken, blocking the fast-track process for federal appeals of state death penalty cases. That process was enacted by Congress and signed into law by President Clinton in 1996. The judge's ruling was based upon the claim of a group of government-paid defense attorneys that the process would work a hardship on them. Efforts by the states of Texas and Arizona, to be approved for the fast-track process, were stopped by Judge Wilken's ruling. When the U. S. Department of Justice appealed that ruling, CJLF joined the case on behalf of two family members of murder victims, Marc Klaas of California and Edward Hardesty of Arizona. CJLF argued that the defense attorneys did not have a legal right (standing) to challenge the law and that it was not appropriate for the district court to review any challenge at this time. The Ninth Circuit opinion used argument and research introduced by the Foundation to overturn the ruling and dismiss the lawsuit.

WIN

TOTAL

4 Wins

2 Losses

0 Draw

“SECURING YOUR HOME”

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- single-sided deadbolt installed about two feet from the top of the door, makes it almost impossible for anybody to kick in the front door.
- Put locks on the gates to your backyard, and use them. A burglar who has to jump the fence is more likely to be seen or heard.
 - Put a metal grate over any single-paned side window to an attached garage that is accessible from the backyard.
 - Install timer controlled or motion detector lights at your front door and your garage. If you park cars in a driveway, bright lights will deter car thieves. In high crime areas, motion detector lights are even a good idea for side yards to deter criminals trying to jump your fence.
 - If you do park cars in your driveway, keep the extra keys in your bedroom. If you hear someone breaking in, push the panic button for your car alarm to frighten off the burglar and alert the neighbors.
 - Keep jewelry, firearms, and other valuables in a safe bolted to the floor, especially when you plan to be gone.

About firearms:

- You have a right to own a gun to protect your home, but there are responsibilities that accompany that right. Taking the time to choose the right gun for you is essential. Take a licensed gun-safety class—every state requires this for a concealed-carry license, and unless you have been trained on firearm use, you should take the class.
- If there are children in or around your home, lock up the guns in a safe.

About security systems:

- Home security systems deter burglars. Even a sign or window sticker announcing a security system in your home is enough to convince a burglar to find an easier target. The best systems use remote cameras triggered by movement that set off an audible alarm and alert police when triggered. Because most burglars case the houses they plan to rob, security cameras that can be easily reached and disabled are not of much value.

There are other steps you can take to protect your home. Coordinate with your neighbors to pick up newspapers and mail and to keep an eye on your home while you are away. Consider forming a Neighborhood Watch group to monitor activity in your neighborhood and establish a line of communication with the local police. Install timers to turn on interior lights at night and consider leaving a radio on to give the impression you are home. Make sure your homeowner's insurance is current and has adequate coverage for your belongings.

Many people only consider steps to improve home security after they have been burglarized. Don't be one of those people.

CJLF needs your support to continue to fight for policy changes and court decisions that protect you and your loved ones from criminals. While most of America is cracking down on drug dealers and illegal immigrants who are committing crimes, California has released tens of thousands of habitual felons in our communities because of policies supported by politicians in Sacramento. We cannot keep up the pressure on lawmakers to restore consequences for crime without your help. Make your 2017 contribution to CJLF today, and please clip and return the card on your right along with your check. To give with a credit card, go to our website (www.cjlf.org) or call us (916-446-0345). *Thank you!*

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Spring 2017

“PROP. 66”

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Back to Plan A, I reminded the court of the forgotten, much-violated California constitutional right of the victims to a prompt and final completion of the case. Then I addressed the separation of powers and the bogus claim that the habeas corpus reforms — venue, filing deadline, successive petitions — somehow violate the separation of powers. Not so, these lie squarely within the people’s reserved legislative power. There did not seem to be any disagreement on that, which is vitally important because these are the most essential reforms in the initiative.

I also addressed the issue of severability, which allows the other provisions of the initiative to remain valid law if one provision is held unconstitutional. The opponents have essentially zero chance on the single-subject rule, and the five-year time limit is the only challenge they made that the court expressed interest in during the argument. The rule clearly requires that to invalidate an entire initiative, the court must find that a challenged provision is so central to the initiative that none of the other provisions can be enforced without it.

The five-year time limit is not central to the initiative, no matter what you read in the San Francisco Chronicle. Indeed, during the campaign, the yes-on-66 op-ed in the Los Angeles Times (which I wrote) does not mention the time limits at all. The argument made to the people was all about the habeas corpus and Administrative Procedure Act reforms.

The court seemed interested in the severability point, and this discussion continued into Ms. Rayburn’s rebuttal.

The court could construe the five-year time limit as I and the



In front of the Ronald Reagan Building in Los Angeles after oral argument: Prop. 66 Proponent Kermit Alexander, Sacramento Co. District Attorney Anne Marie Schubert, and Kent Scheidegger.

Attorney General suggested, making it constitutional. It could say that it is not unconstitutional on its face and wait to judge its constitutionality in a murderer’s challenge to it during review of an actual death penalty case. It could conceivably stretch to say it is facially unconstitutional, but that will not bring down the rest of the initiative and its other important reforms unless the court is able to find it essential to the entire initiative. Given the California Supreme Court’s long tradition of “jealously guard[ing]” the people’s right of initiative, I find it very hard to believe they will do that. I think we are in good shape.

*Kent Scheidegger
Legal Director & General Counsel*



CJLF legal arguments filed, press releases, publications, and information on the ongoing fight against AB109 and to enforce Proposition 66 are available on our Website at:

www.cjlf.org

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